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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern  
California Edison Company (U 388 E) for  
Approval of Economic Development Rates.

Application 04-04-008  
(Filed April 5, 2004)

Application of PACIFIC GAS AND  
ELECTRIC COMPANY to Modify the  
Experimental Economic Development Rate  
(Schedule ED).

Application 04-06-018  
(Filed June 14, 2004)

(U 39 E)

Application of SOUTHERN CALIFORNIA  
GAS COMPANY (U 904 G) for Approval of  
a Long-Term Gas Transportation Agreement  
with Guardian Industries Corp.

Application 05-10-010  
(Filed October 7, 2005)

**(Discount Issues)**

**REPLY COMMENTS OF MERCED IRRIGATION DISTRICT  
AND MODESTO IRRIGATION DISTRICT ON  
PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BARNETT  
AND ALTERNATE PROPOSED DECISION OF PRESIDENT PEEVEY  
REJECTING DISCOUNTING PUBLIC PURPOSE PROGRAM CHARGES**

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August 20, 2007

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Pursuant to Rule 14.3(d) of the Commission's Rules of Practice and Procedure, Merced Irrigation District ("Merced ID") and Modesto Irrigation District ("Modesto ID") (collectively "the Districts") file these Reply Comments on Proposed Decision of Administrative Law Judge Barnett and Alternate Proposed Decision of President Peevey Rejecting Discounting Public Purpose Program Charges ("Reply Comments"). These Reply Comments address factual and legal errors contained in the Comments of Pacific Gas and Electric Company on Proposed Decision of Administrative Law Judge Barnett and Alternate Proposed Decision of President Peevey, filed on August 13, 2007 ("PG&E Comments").

The Districts agree with the conclusion of both the PD and the APD that nonbypassable charges may not be discounted. The Commission should reject as both factually and legally

erroneous efforts by PG&E to equate statutorily-supported *exceptions* to nonbypassable charges with *discounts* of nonbypassable charges.

**1. PG&E Errs Factually and Legally in Arguing that Departing Load Decisions Require Discount of Nonbypassable Charges in the ED Rate Context.**

PG&E argues that the conclusion of both the Proposed Decision (“PD”) and the Alternate Proposed Decision (“APD”) that nonbypassable charges (“NBCs”) may not be discounted is contrary to other Commission decisions concerning NBC exceptions.<sup>1</sup> This argument is both factually and legally erroneous, and must be rejected.

Factually, the customers in question here are customers PG&E has attracted or retained *to be PG&E customers* by granting them the ED rate. The customers involved in the cases cited by PG&E are *not PG&E customers*.<sup>2</sup> They are departed customers who have left PG&E, either by way of using distributed generation or choosing a publicly owned utility. There is a difference between *discounting* NBCs as part of a special rate deal and *excluding* parties from responsibility for certain NBCs because their fair share is zero. The latter is what the Commission has ordered with respect to certain departing load, on the basis that DWR did not incur costs on behalf of that load, there will thus be no shifting of costs to nondeparting investor-owned utility customers, and thus there is no fair share of the DWR costs for the departed load to bear. Hence, the load’s fair share is zero.<sup>3</sup>

Thus, PG&E’s legal analysis seeking to equate discounting of nonbypassable charges with exclusion of responsibility is erroneous. PG&E cites Finding of Fact 1 in both the PD and APD but does not discuss Finding of Fact 2: “There are no exemptions or exceptions for nonbypassable charges other than those specifically described in a statute.”<sup>4</sup> As to NBCs for which Municipal Departing Load (“MDL”) is responsible, the Commission has specifically relied upon a statute, Public Utilities Code Section 366.2(d)(1), in granting certain exceptions to Transferred and New MDL. The Commission has concluded that, where no cost shifting will occur, the fair share of a customer for certain DWR NBCs can be zero.<sup>5</sup> This conclusion proceeds directly from the language of Section 366.2(d)(1).

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<sup>1</sup> PG&E Comments, pp. 7-10.

<sup>2</sup> PG&E cites Decision Nos. 03-04-040, 04-11-014, and 04-12-059. PG&E Comments, pp. 8-9.

<sup>3</sup> D.04-12-059, *mimeo*, pp. 13-14.

<sup>4</sup> PD, p. 34; APD, p. 33.

<sup>5</sup> A good summary of the Commission’s reasoning and conclusions in this regard appears in D.04-12-059, *mimeo*, at pages 13-14.

Thus, it is appropriate under Section 366.2(d)(1), as the Commission has found, to except certain Transferred and New MDL from payment of certain NBCs because MDL has no fair share to pay. This is quite distinct from seeking to discount NBCs for an ED rate customer who does bear a share of such costs and thus, if allowed a discount, would *not* pay its fair share.

**2. *PG&E's Comments Highlight the Need to Revise Certain Portions of the PD and APD.***

PG&E's comments highlight the need to revise certain portions of the PD and APD to clarify the difference between discounting NBCs generally in the ED rate context and allowable exceptions to DWR charges. The Districts suggest the following revisions:

PD, p. 25, APD, p. 26:

Add a third sentence at the end of the discussion appearing after italicized item 2, as follows: "Exclusions from the requirement to pay nonbypassable charges may occur, as the Commission has ordered in the past, when allowed under a statute."

PD, p. 26; APD, p. 26:

In the discussion concerning "DWR charges" add the following at the end of the first sentence (which begins with "The Commission cannot . . ."): "in the absence of a showing of no shifting of recoverable costs."

PD, p. 27; APD, p. 27:

1. Replace "None" after italicized item 4 with: "DWR charges."
2. Replace the sentence beginning with "Exceptions from the . . ." after italicized item 4.a. with: "No showing of lack of cost shifting on behalf of EDR customers has occurred."

PD, Conclusion of Law 2, p. 35; APD, Conclusion of Law 2, p. 34:

Replace with: "There are no exemptions or exceptions for nonbypassable charges other than those specifically described in a statute."

PD, Conclusion of Law 3, p. 35; APD, Conclusion of Law 3, p. 34:

Delete "DWR charges," in the existing sentence, and add the following sentence:

"Exceptions to DWR charges may be allowed upon a showing that there will be no shifting of recoverable costs such that an EDR customer's fair share of DWR charges should be zero."

PD, Conclusion of Law 4, p. 35; APD, Conclusion of Law 4, p. 34:

Replace with: “DWR charges are subject to exception upon a Commission finding that there will be no cost shifting such that an EDR customer’s fair share of DWR charges should be zero.”

**2. Conclusion**

For the reasons set forth above, the Commission should reject PG&E’s efforts to convince the Commission to allow nonbypassable charges for ED rate customers to be discounted. The Commission should also make the revisions requested in Section 2 above before issuing the final decision.

Dated: August 20, 2007

Respectfully Submitted,  
DOWNEY BRAND LLP

By: /s/ Dan L. Carroll  
Dan L. Carroll  
Attorneys for Merced Irrigation District and  
Modesto Irrigation District

## **CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the **REPLY COMMENTS OF MERCED IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BARNETT AND ALTERNATE PROPOSED DECISION OF PRESIDENT PEEVEY REJECTING DISCOUNTING PUBLIC PURPOSE PROGRAM CHARGES** on August 20, 2007, on all known parties to proceeding A. 04-04-008 (Discount Issues), A. 04-06-018 (Discount Issues), and A05-10-010 (Discount Issues) via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address..

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 20<sup>th</sup> day of August, 2007, at Sacramento, California.

/s/ Colleen Bullock

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